

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1115 OF 2011
WITH
CIVIL APPLICATION NO. 9480 OF 2016

Divisional Controller,
MSRTC, Osmanabad.

..Petitioner

Versus

Sultanbi Babu Shaikh,
Age major, Occ. Nil,
R/o Babu Bandeali Shaikh,
S.T. Depot, Bhoom,
District Osmanabad.

..Respondent

...
Advocate for Petitioner : Shri D.S.Bagul a/w Shri Rakesh Jain
Advocate for Respondent : Shri P.L.Shahane

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 05, 2016

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ORAL JUDGMENT :-

1. The respondent / employee has moved the Civil Application for listing the Writ Petition for final hearing out of turn. The respondent has already superannuated in June 2015 and is said to be presently suffering from grave and serious illness. As both the learned Advocates graciously agreed to address the Court on the petition itself, this Civil Application is disposed off and the Writ Petition is heard finally by the consent of the parties.

2. The petitioner / Corporation is aggrieved by the award dated 13.8.2008 by which, the Labour Court, Latur has allowed Reference

(IDA) No. 86 of 2004 and has directed the petitioner to reinstate the employee in service with continuity and full backwages.

3. Learned Advocate for the petitioner has strenuously criticized the impugned award. Contention is that the employee was working as a Sweeper on daily wages from 1.8.1986 and her service was orally dispensed with on 1.9.2001, since she was not a regular employee in the service of the Corporation. She was engaged for cleaning the office premises, which was a job to be performed in the morning. She was never engaged to perform duties in a shift schedule or during particular office hours. A daily wager, therefore, cannot claim continued employment in the absence of a right to employment. The impugned award is against settled position in law and, therefore, deserves to be set aside.

4. It is further submitted that by order dated 15.2.2011, this Court had stayed the payment of backwages. While admitting the matter on 13.4.2011, this Court directed the Corporation to continue the respondent on daily wages during the pendency of the petition, by staying the payment of backwages. Consequentially, she was reinstated in May 2011 and she has attained the age of superannuation in June 2015.

5. Shri Shahane, learned Advocate for the respondent has

supported the impugned order. With regard to the direction to pay the full backwages, he has strenuously submitted that the respondent is entitled for full backwages as she could not get employment despite making efforts. Being a Class IV labourer and a lady, she was not successful in getting alternate employment. The illegality committed by the Corporation has rendered the respondent to starvation and hence she deserves the entire backwages.

6. I have considered the submissions of the learned Advocates and have gone through the petition paper book with their assistance.

7. The petitioner had filed its written statement at Exhibit C/9 before the Labour Court. Though it was denied that the employee had not completed 240 days in continuous employment in each calendar year with the Corporation, it was stated that she was working from 1.8.1986 till 1.9.2001. It was also stated that as she was orally engaged, she was orally dis-engaged. There is no dispute that the Corporation had not complied with Section 25-F of the Industrial Disputes Act, 1947.

8. Considering the above fact situation, I do not find that the impugned award could be termed as being perverse or erroneous in so far as the direction of reinstatement with continuity of service is concerned.

9. With regard to the full backwages granted by the Labour Court, learned Advocate for the Corporation submits that the Corporation has been perennially in losses. The losses are mounting every passing day. Principle of “No work No wages” needs to be made applicable.

10. The respondent has led evidence stating that she had become overage after her termination and though she has tried to obtain alternate employment, she was unsuccessful.

11. The Honourable Supreme Court in the matter of Gauri Shankar Vs. State of Rajasthan [2015 II CLR 497], has concluded that when the termination of an employee is held to be illegal, grant of 25% backwages would be reasonable in order to reduce the hardships suffered by the employee.

12. As such this petition is partly allowed. The impugned award is modified only to the extent of the backwages and as such, the petitioner shall pay 25% backwages to the respondent by calculating the same on the basis of her last drawn monthly wages in the month of August, 2001. Said amount shall be paid within 12 weeks from today, failing which the petitioner shall pay interest at the rate of 6% p.a. from the date of the award.

13. Needless to state, since the direction of reinstatement has been complied with and continuity of service has been granted, the petitioner shall process the proposal of the respondent for payment of all retiral benefits like family pension, gratuity, family pass, leave encashment etc. as may be payable as per the Rules and service conditions and to be calculated considering her service from 1.8.1986 till June, 2015, within a period of 12 weeks.

14. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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